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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

223.

THE CANADIAN PACIFIC STEAMSHIPS, LTD., and
THE CANADIAN PACIFIC RAILWAY CO.,

Petitioners,

against

EVELYN McAFOOS and WILLIAM NEFF,

Respondents.

PETITIONER'S REPLY BRIEF.

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondents brief suggests, as does the decision of the Circuit Court below, that an "ambiguous legal status" led the attorneys for Miss McAfoos to commence this second action a month after the original suit in admiralty was commenced. Such suggestion carries the erroneous implication that some substantive claim will be denied Miss McAfoos if she proceeds in admiralty, where she first elected to proceed. However, the suit in admiralty presents every claim urged in this suit at law. The petition for certiorari here raises no problem as to any substantive rights of plaintiffs below, but rather this petition presents a problem of statutory construction: i.e., does the *election* requirement of the Jones Act prohibit the plaintiffs below from maintaining against the defendants below, two identical actions, one in admiralty and one at law.

Plaintiffs rely, in this Court, primarily on the case of *McCarthy v. American Eastern Corp.*, 3 Cir. 175 F. 2d 724

cert. denied 338 U. S. 868, to support the holding of the Circuit Court below that the Jones Act, regardless of the specific language of that Act as to election, requires no election. But the McCarthy case does not justify the maintenance of two suits simultaneously and, on the contrary, indicates that an election is required between a suit at law and a suit in admiralty (175 F. 2d 726):

> "In our view the election to which the Jones Act refers is an *election of remedies as between a suit in admiralty and civil action.* Prior to the passage of the Jones Act, unless there was diversity of citizenship, a seaman was compelled in the federal court to assert his cause of action for injuries in a suit in admiralty in which there was no jury trial. It was the purpose of the 'election' clause of the Jones Act, we think, to make certain that an injured seaman, *instead of suing in admiralty*, could at his option assert his cause of action for personal injuries in the federal court in an action at law regardless of diversity of citizenship * * *"
> (Emphasis supplied and footnote citations omitted)

The language of the Jones Act, which states that a seaman "may, at his election, maintain an action for damages at law * * *" has been made meaningless by the court below. The confusion resulting can only produce hardship to plaintiffs and defendants alike.

The petition should be granted.

Respectfully submitted,

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